



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

November 18, 2014

Mr. Fred Daibes
38 COAH Associates, LLC
1000 Portside Drive
Edgewater, New Jersey 07020

Re: Notice of Potential TSCA Liability//Opportunity to Refute and/or Settle

Dear Mr. Daibes:

The United States Environmental Protection Agency (EPA or Agency) is responsible for enforcing the provisions of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2601 *et seq.*, and the regulations implementing its provisions, including the regulations governing the use, storage, management and disposal of polychlorinated biphenyls (PCBs) that are codified at 40 C.F.R. Part 761. EPA promulgated the Part 761 regulations under authority given the Agency in Section 6 of TSCA, 15 U.S.C. § 2605.

On June 14, 2014, pursuant to Section 11 of TSCA, 15 U.S.C. § 2610, EPA representatives conducted an inspection of the site where previously Building 12 of the Aluminum Company of America (Alcoa) facility stood; this site is located in and around 660 River Road in Edgewater, New Jersey. As a result of this inspection, EPA has preliminarily concluded that 38 COAH Associates, LLC (COAH), the present owner of the site (hereinafter referred to as the "COAH facility"), is in violation of a number of provisions of the 40 C.F.R. Part 761 regulations, and hence is liable to the United States under the provisions of TSCA. The Agency now wishes to provide COAH with an opportunity to discuss EPA's findings that COAH has violated (and remains in violation) of TSCA statutory and regulatory provisions.

EPA believes that COAH, as the site owner, violated the following provisions in connection with the COAH facility site: 1) the requirement to dispose of PCB remediation waste containing PCBs at a level greater than 50 parts per million (ppm) pursuant to one of three provisions, *viz.* (a) 40 C.F.R. § 761.61(a)(5)(i)(B)(2)(iii), for the disposal of bulk PCB remediation waste in a hazardous waste landfill permitted by EPA under Section 3004 of RCRA [Resource Conservation and Recovery Act; 42 U.S.C. § 6924] or by a State authorized under Section 3006 of RCRA [42 U.S.C. § 6926], (b) 40 C.F.R. § 761.61(b)(2), for the disposal of such waste in accordance with the performance-based disposal methods prescribed therein, or (c) 40 C.F.R. § 761.61(c), for the disposal of such waste in accordance with the provisions therein for a risk-based disposal approval (on multiple occasions in September and October 2013, numerous

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truckloads of crushed concrete contaminated with PCBs at levels greater than 50 ppm were transported from the COAH facility and then disposed at Veterans Field, a nearby public park owned by the Borough of Edgewater); 2) the requirement of 40 C.F.R. § 761.65 that bulk PCB remediation waste or PCB bulk product be stored at the site of generation for no more than 180 days provided a number of conditions specified in this regulation are met, including that a protective cover be installed to cover all stored PCB-containing waste (at the time of the EPA inspection, bulk PCB remediation had been stored at the COAH facility for a period in excess of 180 days and the protective cover used did not completely prevent contact with precipitation); 3) the requirement of 40 C.F.R. § 761.60(c) that PCB containers with a PCB concentration of 500 ppm or greater be disposed in a 40 C.F.R. § 761.70 incinerator or in a 40 C.F.R. § 761.75 chemical waste landfill unless such containers had been decontaminated in compliance with 40 C.F.R. § 761.79 (two underground storage tanks previously installed at the site of the COAH facility that had been cut up and disposed as scrap metal were never decontaminated in accordance with the provisions of 40 C.F.R. § 761.79; the PCB level of their prior contents reached 842 ppm); 4) the requirement of 40 C.F.R. § 761.207(a) that PCB waste, when transported for off-site storage or disposal, be identified as PCB waste on EPA Manifest Form 8700-22 (two 250-gallon poly totes containing PCB waste from the site of the COAH facility were transported to the site of the Waterside Construction, LLC, yard without their identification on EPA Manifest Form 8700-22); and 5) the requirement of 40 C.F.R. § 761.207(a) that a generator who relinquishes control over PCB waste shall prepare a manifest on EPA Manifest Form 8700-22 (the prepared manifests that accompanied the off-site shipment of PCB-containing waste did not accurately identify the generator, nor did they accurately list the date(s) of removal from service for disposal).

As a consequence of the aforementioned violations, EPA believes COAH to be potentially liable to the United States under the following provision of Section 15 of TSCA, 15 U.S.C. § 2614, which states, in part:

It shall be unlawful for any person to—

- (1) fail or refuse to comply with...any rule promulgated or order issued under section 2605...of this title [Section 6 of TSCA, 15 U.S.C. § 2605]....

Such liability would be predicated upon Section 16(a) of TSCA, 15 U.S.C. § 2615(a). Subparagraph (1) of that provision provides:

Any person who violates a provision of section 2614...of this title shall be liable to the United States for a civil penalty in an amount not to exceed \$25,000 for each such violation. Each day such a violation continues shall, for purposes of this subsection, constitute a separate violation of section 2614...of this title.

Subsequent to the enactment of this provision, the amount of penalty for which a violator might be found liable for each violation for each day has been increased from \$25,000 to \$37,500. 40

C.F.R. Part 19. Sub-paragraph (2)(A) of Section 16(a), 15 U.S.C. § 2615(a)(2)(A), authorizes the commencement of a proceeding for the assessment of any such penalty(ies).

We are writing to provide you with an opportunity to meet with EPA prior to the Agency likely issuing a complaint under Section 16(a) of TSCA, 15 U.S.C. § 2615(a) against COAH. At such a meeting, EPA will explain in greater detail the nature of the violations, the remedies available to the Agency under these circumstances, and the possible civil penalty(ies) for these violations. Also at the meeting, COAH will have an opportunity to present evidence to rebut or refute EPA's findings and conclusions about COAH's non-compliance, and you may discuss any mitigating factors you deem relevant to such possible violations, the penalties that might be sought for such violations and/or any other circumstances you wish to bring to EPA's attention that bear on such matters and COAH's storage, disposal and management of PCB-containing wastes at the site of the COAH facility. At any such meeting EPA will have counsel present, and, if it so elects, COAH may be represented by counsel.

Pursuant to the applicable rules of procedure governing a proceeding so prosecuted, EPA is authorized to commence and conclude a proceeding without the issuance of a complaint. 40 C.F.R. § 22.13. A settlement would be memorialized in an administrative consent agreement and likely would require that COAH pay a monetary civil penalty. Any settlement reached under this expedited settlement procedure would be in accordance with applicable statutory provisions and consistent with EPA guidance. Consistent with these factors, circumstances such as the possible impact a penalty might have on COAH's financial situation can be raised as a basis for a possible reduction of the penalty amount paid in settlement.

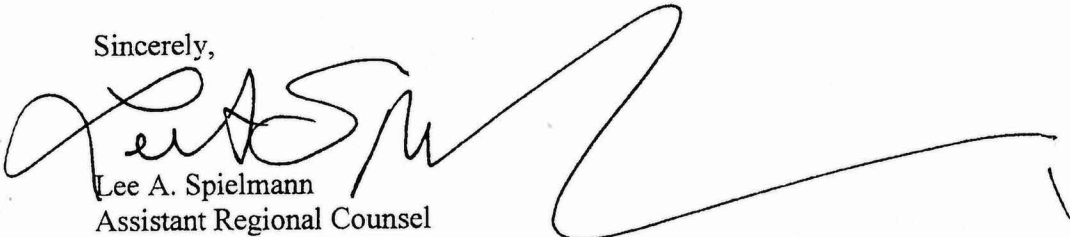
For your reference, you may obtain a copy of the following documents at these websites: EPA's Consolidated Rules of Practice, 40 C.F.R. Part 22 (<http://www.epa.gov/oalj/rules/crop.pdf>); the appropriate EPA penalty policy guidance (<http://www2.epa.gov/enforcement/polychlorinated-biphenyls-pcb-penalty-policy>); information on EPA's Supplemental Environmental Projects and how they might result in a reduction in the amount of the civil penalty in a settlement (<http://www2.epa.gov/enforcement/policy-issuance-final-supplemental-environmental-projects>); and, for any possible obligations related to matters governed by the Securities and Exchange Commission (<http://www.epa.gov/compliance/resources/policies/incentives/programs/sec-notice-dutytodisclose.pdf>). These documents may be of use if you decide to meet with EPA to discuss the matters outlined above. EPA encourages that, as part of any settlement, COAH consider undertaking a Supplemental Environmental Project.

If the parties are unable to reach an agreement, such as a settlement (or if no such meeting is held), EPA will evaluate other possibilities, including whether to issue a complaint under authority of Section 16(a) of TSCA, 15 U.S.C. § 2615(a). Issuance of a complaint commences an administrative adjudicatory proceeding. In such a proceeding EPA would seek to have COAH found liable for non-compliance with the provisions referenced above and would also seek to have a penalty assessed against it. The penalty sought would likely be greater than the amount that might be negotiated in a settlement.

Nothing in this letter is intended to pre-empt or waive any sanction or remedy available to EPA under applicable TSCA statutory and regulatory provisions against COAH (or any other party that might be liable) for any violation(s) at the site of the COAH facility, whether explicitly referenced in this letter or not, of TSCA and/or its implementing regulations.

If you wish to schedule a conference, and/or if you have any questions about the settlement process, the commencement and prosecution of an administrative enforcement proceeding (including the applicable penalty determination) or any other matter referenced above, I ask that you kindly call me (or have your counsel do so) at 212-637-3222 or contact me at spielmann.lee@epa.gov within three weeks of your receipt of this letter.

Sincerely,



Lee A. Spielmann
Assistant Regional Counsel
Office of Regional Counsel

cc: Vivian Chin, Edison, New Jersey (EPA, Pesticides and Toxic Substances Branch)